Supreme Court, U.S.
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No. 98-1004

In The

Supreme Court of the United States

October Term, 1998

OLGA H. GARAU,

Petitioner,

v.

JAMES K. HAHN, THOMAS C. HOKINSON and CITY OF LOS ANGELES,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does the United States Supreme Court have jurisdiction to review a United States Constitution Fourteenth Amendment equal protection issue on which no California court in this case has issued an opinion and that was raised for the first time in the California Court of Appeal.

2. Should the United States Supreme Court grant review of a United States Constitution Fourteenth Amendment equal protection issue involving discretionary acts immunity granted to California's government employees under California Government Code section 820.2 where the issue was not raised in the trial court or addressed by any court in this case, and all published opinions that have addressed the issue have uniformly decided that discretionary acts immunity does not violate equal protection rights?

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OPINIONS AND ORDERS BELOW

The orders and judgment listed below are unpublished and are reprinted in the Respondent's Appendix ("RA") to this opposition.

In addition, the two pages from the record on appeal cited by Petitioner at page 10 of the Petition For Writ of Certiorari are also included in the Respondent's Appendix at RA – 1.

The February 24, 1998 Order Granting Defendant's Motion For Summary Adjudication is at RA – 4.

The March 11, 1998 Order Granting Defendant's Motion For Summary Judgment is at RA – 6.

The March 11, 1998 Judgment By Court Order Under C.C.P. Section 437c Against Plaintiff And In Favor Of Defendant City Of Los Angeles is at RA – 9.

JURISDICTION

Petitioner claims this court has jurisdiction over the question she presents, stating the "Federal Question" was raised "IN THE COURT OF FIRST INSTANCE" which would be in the Los Angeles Superior Court. Pet. 10. This is not true. There is no reference to the United States Constitution, or to the equal protection clause of the United States Constitution in the Superior Court record cited by Petitioner. RA – 1-3. Petitioner did not raise the issue until she reached the California Court of Appeal and that court's opinion does not address the issue. The

California Court of Appeal, like this court, does not review issues not properly raised below.

STATEMENT OF THE CASE

1. Introduction

Petitioner Olga Garau petitions for review on an issue that was not raised in the trial court, not addressed by the Court of Appeal (presumably because it was never raised in the trial court), and on which the California Supreme Court denied review. Thus, there is no federal issue that has been decided by any California court in this case, let alone any federal issue over which the United States Supreme Court would have jurisdiction to review.

Garau, formerly a deputy city attorney of the City of Los Angeles, admits under oath in her First Amended Complaint that she became embroiled in a dispute with her employer – the City – when she filed a written motion with the Ninth Circuit Court of Appeals complaining about her co-counsel, who was a co-worker and an assistant city attorney, because he had obtained an extension for filing a brief without her knowledge. The Office of the City Attorney, as in house counsel for her employer – the City of Los Angeles – was embarrassed by her action and directed her to withdraw the motion against her co-worker. But petitioner refused. Due to petitioner's insubordination in response to a directive from *the* city attorney to withdraw the motion, her supervisor reassigned four of her cases to another attorney. Her supervisor also gave her a "Skelly" notice [*Skelly v. State Personnel Bd.*, 15

Cal.3d 194, 215 (1975)] which begins the procedure for instituting disciplinary or dismissal proceedings.

Petitioner was given a deadline to respond to the Skelly notice, and she was subsequently also given an extension to respond to the notice.

Instead of responding as provided under the "Skelly" procedure, petitioner simply filed a lawsuit and then resigned from her position. Her lawsuit was against her employer – the City of Los Angeles – as well as two individuals who are not her employers: James K. Hahn, the City Attorney, and Thomas C. Hokinson, Chief Assistant City Attorney for the Department of Water and Power. She claimed discrimination under state law based on sex, ancestry, and national origin, along with 15 other causes of action. Petitioner's lawsuit against the individual defendants was dismissed for failure to state a cause of action. As to five causes of action, the court concluded that they could only be against an employer and because the individual defendants were not her employer, petitioner could not pursue those causes of action against the individuals. As to all causes of action, the court concluded that the individual defendants were immune from liability for the disciplinary actions against petitioner under California Government Code section 820.2, the discretionary acts immunity provisions covering government employees.

Petitioner's appeal to the California Court of Appeal, and her petition for review to the California Supreme Court were both unsuccessful. The Court of Appeal affirmed the dismissal by the trial court, and the Supreme Court denied review. Petitioner did not raise in the trial

court the issue she now asks this court to review and neither the trial court nor the Court of Appeal nor the Supreme Court discussed petitioner's claim of violation of equal protection under the Federal Constitution.

2. Misrepresentations concerning the facts.

Petitioner fails to disclose in her statement of facts the incident leading to the disciplinary action against her. Pet. 6-7. That incident, as set forth in her First Amended Complaint, which she verified under oath, was her filing of a motion in the Ninth Circuit Court of Appeal accusing an assistant city attorney of "misconduct" because he had obtained an extension to file a brief. Pet. A:37 ¶ 34.

Petitioner also fails to disclose to this court in her fact statement that she was directed by her supervisor to withdraw the motion but she refused, and her insubordination resulted in disciplinary proceedings. Pet. A:37 ¶ 34.

Petitioner also does not disclose that the City of Los Angeles gave her proper "Skelly" notice of the proposed disciplinary action, to which she was entitled to present a written response. She was even given an extension of time to respond but she never offered any written response. Instead, she filed a lawsuit against the defendants and resigned. Her claims of employment "termination" and that she was "forced to quit" misrepresent the above facts. Pet. 6-7.

3. Misrepresentations concerning the procedural posture.

Petitioner identifies the discretionary acts immunity statute – California Government Code section 820.2 – as the only basis on which her complaint was dismissed. Pet. 8. She fails to disclose that five of her 16 causes of action were also dismissed because they are based on theories of recovery that allow a right of action only against an employer, and the two individual defendants were not her employer.

While petitioner claims she has been denied equal protection under the United States Constitution because she could not pursue the individual defendants, she does not disclose in her procedure section that

(1) her action for all 16 causes of action against the City of Los Angeles continued,

(2) she later dismissed three of her causes of action against the City of Los Angeles, and

(3) her action against the City of Los Angeles has now proceeded to judgment, and she lost that action on the merits. RA – 3-9.

Thus, she was not prevented from seeking a remedy against her employer, and it has now been determined that her entire action is meritless. RA – 4-10.

REASONS FOR DENYING THE PETITION

I. THERE IS NO JURISDICTION BECAUSE PETITIONER DID NOT TIMELY RAISE THE UNITED STATES CONSTITUTION EQUAL PROTECTION ISSUE IN THE TRIAL COURT.

Contrary to petitioner's claim that she raised the United States Constitution equal protection issue during argument in the lower court, the transcript of that argument, which she cites in her petition, contains no mention of any equal protection argument. RA – 1-2. Moreover, after petitioner failed to raise the issue in the trial court, the California Court of Appeal did not discuss the equal protection argument that she raised for the first time on appeal. Neither did the California Supreme Court grant review of the equal protection issue, which was not addressed in the Court of Appeal opinion.

When "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York*, 394 U.S. 576, 582 (1969).

Petitioner made no showing to the contrary. There is no jurisdiction to review this issue.

II. PETITIONER'S CASE AGAINST HAHN AND HOKINSON DOES NOT MEET THE RULE 10 STANDARDS FOR REVIEW ON A WRIT OF CERTIORARI; THE QUESTION PRESENTED IN THE PETITION IS NOT ADDRESSED BY ANY COURT BELOW.

The Rule 10 considerations for the United States Supreme Court granting review have not been met, and there are no other compelling reasons for granting review.

Rule 10(b) provides for review when

> a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

But the state court of last resort here made no decision whatsoever concerning any federal question and no federal question was raised by petitioner at the trial level.

Rule 10(c) provides for review when

> a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

But the state court in this case has not decided *any* question of federal law, let alone an important question of federal law, there having been no question of federal law raised in the first instance. Thus, there is nothing for this court to review and no law to be settled.

Moreover, in view of petitioner's late raising of the issue that she now asks this court to decide, it was not

appropriate for either the California Court of Appeal or the California Supreme Court to address the issue.

Finally, as explained below, the law is overwhelming concerning the meritlessness of petitioner's equal protection argument. There is no basis for granting review.

III. THE FACT SPECIFIC EQUAL PROTECTION ARGUMENT AS TO THE INDIVIDUAL DEFENDANTS IS MERITLESS.

A. Every Published Opinion Addressing The Equal Protection Challenge To Governmental Discretionary Acts Immunity Has Rejected It.

1. The Equal Protection Clause And The Rational Basis Test.

The law governing the constitutional parameters of the equal protection clause within both the California and United States Constitutions is well-settled and no conflicting law on the meaning or application of the Equal Protection Clause exists in California, the federal courts, or the United States Supreme Court.

All of the cases say that the Equal Protection Clause does *not* forbid a state or federal Legislature from imposing any statutory classifications. *Atchison, T. & S.F.R. Co. v. Matthews,* 174 U.S. 96, 102 (1899); *Stanley v. City and County of San Francisco,* 48 Cal.App.3d 575, 580-581 (1975); *McAllister v. South Coast Air Quality etc., Dist.,* 183 Cal.App.3d 653, 659 (1986).

The decisions of the courts are equally uniform that the Equal Protection Clause does *not* command that all persons be treated alike. *Kranson v. Valley Crest Nursing*

Home, 755 F.2d 46, 52 (1985). Rather, that clause directs only that "all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).

The standard for measuring the validity of state legislation against the dictates of the Equal Protection clause begins with various well-settled principles, not the least of which include the *presumption* that the legislature acted within constitutional limits and with the purpose of promoting the interests of the people as a whole. *Id.* at 439; *Atchison, T. & S.F.R. Co. v. Matthews*, 174 U.S. at 104; *Stanley v. City and County of San Francisco*, 48 Cal.App.3d at 579.

Moreover, there is no confusion or conflict in the lower courts that state and federal legislatures are provided broad discretion in making classifications. Statutes will be upheld against constitutional attack where the classification bears a reasonable, rational relationship to a legitimate state interest. *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. at 439; *County of Los Angeles v. Superior Court*, 62 Cal.2d 839, 846 (1965); *Reed v. City & County of San Francisco*, 237 Cal.App.2d 23, 24 (1965). A classification must be reasonable, not arbitrary, and any ground of distinction must have a fair relation to the object of the litigation. *Johnson v. Robison*, 415 U.S. 361 (1974). "A statutory discrimination will not be set aside as a denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U.S. 580, 584 (1935); *Plyler v. Doe*, 457 U.S. 202, 216 (1982); *Stanley v. City and County of San Francisco*, 48 Cal.App.3d at 579.

2. Under Settled Law Governmental Immunity Statutes Do Not Violate The Equal Protection Clause.

a. The Sovereign Immunity Doctrine.

For over 30 years, the California Tort Claims Act (California Government Code section 810 et seq.) has withstood constitutional attack. *Martinez v. State of Cal.*, 444 U.S. 277, 282 (1980); *Datil v. City of Los Angeles*, 263 Cal.App.2d 655, 660-661 (1968); *Roberts v. State of California*, 39 Cal.App.3d 844, 849 (1974). The reason is because a legitimate, reasonable public interest is served by imposing limitations upon the manner and the extent to which governments and their public officials can be sued.

Immunities provided to governments and their public officials are a product of the time-honored legal doctrine of sovereign immunity. *Smith v. Reeves*, 178 U.S. 436, 448 (1900) [The doctrine is so well-settled "it is hardly necessary to be formally asserted."].

Despite any infirmities in the now-archaic concepts of kingdoms, the modern sovereign immunity doctrine has survived to encompass the basic premise that the sovereign state is immune from any liability whatsoever unless it gives its consent to be sued. *Grimes v. Pearl River Valley Water Supply Dist.*, 930 F.2d 441, 443 (5th Cir. 1991); *Stanley v. City and County of San Francisco*, 48 Cal.App.3d at 578-579. The United States, a sovereign state, is immune from suit except to the extent it expressly consents to be sued. *Dalehite v. United States*, 346 U.S. 15, 30 (1953); *United States v. Sherwood*, 312 U.S. 584, 586 (1941). States and other governmental entities within the state are immune from suit except to the extent they expressly

consent to be sued. *Hans v. State of Louisiana*, 134 U.S. 1 (1890).

Moreover, a state has the power to prescribe the terms and conditions upon which it will be sued. *Hans v. State of Louisiana*, 134 U.S. at 17. It can even withdraw its consent to be sued. *Id.*; *Lynch v. United States*, 292 U.S. 571, 581 (1934). The sovereign state "remains free to create substantive defenses or immunities for use in adjudication – or to eliminate its statutorily created causes of action altogether. . . . " *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432 (1982); *Ferri v. Ackerman*, 444 U.S. 193, 198 (1979); *Miller v. U.S.*, 73 F.3d 878, 881 (9th Cir. 1995).

The most common expression of the sovereign state's consent to be sued is found in legislation pertaining to state and federal tort claims. See, *Wright v. United States*, 719 F.2d 1032, 1034 (1983) [The Federal Tort Claims Act waives sovereign immunity making the United States liable in tort as prescribed in that Act].

The California Legislature enacted a series of statutes in 1963 that expressly provide that sovereign immunity exists to protect the state, public entities, and public officials from tort liability except in those limited areas where the Legislature has expressly authorized suit. *Roberts v. State of California*, 39 Cal.App.3d at 849. The California Tort Claims Act, Government Code section 815 et seq., "sets out a carefully devised statutory scheme under which the government and other public entities can be sued." *Stanley v. City and County of San Francisco*, 48 Cal.App.3d at 579. "In short, sovereign immunity is the rule in California; governmental liability is limited to exceptions specifically set forth by statute." *Cochran v.*

Herzog Engraving Co., 155 Cal.App.3d 405, 409 (1984); *Harshbarger v. City of Colton*, 197 Cal.App.3d 1335, 1339 (1988).

Thus, the California Tort Claims Act, like all tort claims acts, makes a distinction between governmental-tort victims and nongovernmental-tort victims. That statutory classification has repeatedly and uniformly been held "to have a fair and substantial relation to the object of the legislation" and to promote numerous legitimate state interests. *Stanley v. City and County of San Francisco*, 48 Cal.App.3d at 581. Placing governmental agencies in a classification different from nongovernmental agencies is a reasonable and constitutionally valid classification. *Wadley v. County of Los Angeles*, 205 Cal.App.2d 668, 673 (1962); *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 123, 131 (1941) [same]; *Dias v. Eden Township Hospital Dist.*, 57 Cal.2d 502, 504 (1962) [same].

There is no conflict in the law that would justify review in this Court. Moreover, this Court has already determined, as recently as 1980, that the California Tort Claims Act bears a rational relationship to the State's purposes. *Martinez v. State of Cal.*, 444 U.S. 286, 282 (1980).

Both state and federal courts have consistently and uniformly held that tort claims acts prescribing the limits upon which a governmental entity can be sued do not violate either the due process clause or the equal protection clause of the constitution. *Grimes v. Pearl River Valley Water Supply Dist.*, 930 F.2d at 444; *Tammen v. County of San Diego*, 66 Cal.2d 468, 481 (1967); *Stanley v. City and County of San Francisco*, 48 Cal.App.3d at 579.

b. Discretionary Acts Immunity Bears A Rational Relationship To A Legitimate State Interest.

Courts have consistently and uniformly held the discretionary acts immunity (as set forth in California's Government Code section 820.2 as well as the similarly-phrased Federal Tort Claims Act) does not violate either the due process clause or the equal protection clause.

The discretionary acts immunity contained within the Federal Tort Claims Act was sanctioned by this Court in *Dalehite v. United States*, 346 U.S. at 34-36. This Court recognized that when the United States consented to be sued by passing the Federal Tort Claims Act, Congress never intended that its public officials exercising their decision-making judgment in the course of performing their public duty should have their judgments tested by suits for tort damages. *Id.* at 27.

The fundamental, legitimate state purpose in affording discretionary acts immunity to public officials is to preclude tort claims arising from decisions by governmental administrators where those decisions require judgment and policy choices. *Wright v. United States*, 719 F.2d at 1035. The whole idea is to shield public officers "from undue interference with their duties and from potentially disabling threats of liability." *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982); *Dalehite v. United States*, 346 U.S. at 36.

There is no confusion or conflicting law; the law is the same in California. *Muskopf v. Corning Hospital Dist.*, 55 Cal.2d 211, 220-221 (1961).

With this considerable, unchallenged, well-settled justification supporting the discretionary acts immunity, the very immunity statute that petitioner attacks here was declared constitutional in California. *Bonds v. State of California ex Rel. Cal. Highway Patrol*, 138 Cal.App.3d 314, 322 (1982). In *Bonds*, the California Court of Appeal concluded that a sovereign state's legitimate right to impose conditions and limitations on the right of a claimant to bring suit against it or its public officials provided ample justification and a rational basis for the distinction between the private sector and the public sector. "Thus, the state may preclude causes of actions based on the discretionary acts of its employees." *Id.*

Therefore, there is no contrary or conflicting authority that would justify review by this Court. There is no federal question presented that has not been settled by this Court, let alone an important question of federal law, that would justify review.

B. Discretionary Acts Immunity Does Not Deny Equal Protection Of The Laws To Public Employees When Applied To Employment Discrimination Cases.

Petitioner contends that discretionary acts immunity denies equal protection to public employees for discrimination in employment. The argument, to the extent it can be followed, seems to suggest (1) that public employees are denied equal protection because they are prevented from suing their supervisors under circumstances where private sector employees can sue their supervisors and

(2) she cannot recover punitive damages against a government entity.

The problem with petitioner's contentions is that discretionary acts immunity did not act in practical effect to deprive plaintiff of equal protection of the law because no employee (public or private) may sue their supervisors for discrimination in employment under California law. *Reno v. Baird*, 18 Cal.4th 640 (1998). In *Reno v. Baird*, a private sector employee sued individual supervisors seeking to recover monetary damages for, among other things, discrimination in employment under California's Fair Employment And Housing Act (FEHA) (the very statute upon which petitioner based her claims against these individual defendants). The California Supreme Court concluded in *Reno v. Baird* "that individuals who do not themselves qualify as employers may not be sued under FEHA for alleged discriminatory acts." *Id.* at p. 663.[1] Even in the private sector then, individual supervisors cannot be held personally liable for discrimination in employment. And, without the imposition of personal liability, there would be no right to recover punitive damages. Thus, the discretionary acts immunity statute does not have the practical effect of depriving petitioner of any redress that would otherwise be available to her if she were employed in the private sector. Petitioner was not denied the equal protection of the laws.

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[1] The law is the same under the federal statutory counterpart for discrimination in employment cases, the Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e et seq. *Miller v. Maxwell's Intern. Inc.*, 991 F.2d 583, 587 (9th Cir. 1993).

Moreover, petitioner cannot complain that she, as a public employee, is somehow deprived of equal protection of the laws because other members of the general public can recover punitive damages against a municipality. That is not the law. No person (whether in the public or private sector) can recover punitive damages from a municipality. See, *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Therefore, petitioner stands on like footing with all other public and private citizens and there is no denial of equal protection.

Finally, petitioner has no factual or legal basis to contend that she was denied equal protection of the laws. Petitioner did pursue her suit against the City and lost. RA – 4-10. Summary judgment was granted and the trial court awarded attorneys fees in favor of the City of Los Angeles for petitioner's pursuit of a frivolous lawsuit.

CONCLUSION

For all of the reasons stated above, the petition for a writ of certiorari should be denied.

Dated: January 21, 1999

Respectfully submitted.

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February 24, 1998 Order Granting Defendant's Motion For Summary Adjudication RA-4

March 11, 1998 Order Granting Defendant's Motion For Summary Judgment..... RA-6

March 11, 1998 Judgment By Court Order Under C.C.P. Section 437c Against Plaintiff And In Favor Of Defendant City Of Los Angeles RA-9

APPENDIX

* * *

[Court of appeal record, p. 107] BOSS WORKER EMPLOYEE.

SHE DID NOT PERFORM ADMINISTRATIVE DUTIES. SHE DID NOT PERFORM OTHER DUTIES LIKE SHE WASN'T AN ENGINEER FOR THE DEPARTMENT OF WATER AND POWER. SHE WAS A LAWYER. AND SHE HAD TO PROVIDE CERTAIN, SHE HAD TO PERFORM CERTAIN DUTIES FOR THE DEPARTMENT OF WATER AND POWER.

AND SO THERE COMES A TIME WHEN YOU HAVE TO SAY TO YOUR BOSS "WAIT A MINUTE. I AM A LAWYER, MR. HAHN. AND I HAVE GOT CERTAIN RESPONSIBILITIES TO MY CLIENT."

AND SO I BEG TO DIFFER. I THINK THAT THERE IS A DIFFERENCE GOING ON. WHAT I AM CONCERNED ABOUT IS THAT IN THE RESPONSE, YOUR HONOR, IN THE OPPOSITION, THEY ARE VERY CAVALIER WITH THIS RELATIONSHIP, AND THEY WERE READY TO DISMISS IT. IT'S SOMEBODY THAT HAD A BEEF, BECAME VERY INSUBORDINATE. AND WE HAD TO DO SOMETHING ABOUT THIS VERY INSUBORDINATE LADY. WELL, I THINK THAT'S SEXISM CREEPING INTO THIS COURTROOM IN THE GUISE OF AN OPPOSITION.

SHE WAS A LAWYER AND SHE HAD CERTAIN RESPONSIBILITIES. AND WE HAVE TO LOOK AT THAT VERY CAREFULLY, WHICH THEN RETURNS US TO THE ISSUE OF HOKINSON AND HAHN.

AND FINALLY, YOUR HONOR, WE DIDN'T PRESENT, AND MY CLIENT WHO WAS A BRILLIANT LAWYER HERSELF BROUGHT IT UP AND SHE SAID, YOU KNOW, WAIT A [Court of appeal record, p. 108] MINUTE. IF THIS WERE A CORPORATION, I WOULD BE ABLE TO GET PUNITIVES WHICH WE KNOW FROM THE HISTORY OF MANY CASES THAT ARE TRIED IN THIS AREA IS THE BULK OF DAMAGES IN THE PRIVATE SECTOR.

OKAY. SO SHE CHOSE TO WORK FOR THE GOVERNMENT. SHE MAY HAVE HAD MORE BENEFITS THAN WHAT A LOT OF CORPORATE EMPLOYEES GET. BUT ON THE OTHER HAND, IN DISMISSING HOKINSON AND HAHN WAS HER OPPORTUNITY TO ALSO HAVE THE OPPORTUNITY TO OBTAIN AT LEAST SOME DAMAGES. IT CERTAINLY WOULDN'T BE THE SAME IF SHE WERE GOING AFTER A CORPORATE EMPLOYER.

AND IT'S THOSE AREAS THAT I WOULD ASK THE COURT TO TAKE A LOOK AT AND PERHAPS RECONSIDER HIS RULING.

MS. MILLER: YOUR HONOR, I WOULD JUST CITE TO YOU CALDWELL VERSUS MONTOYA AT 10 CAL.4TH 972 WHICH IS THE CALIFORNIA SUPREME COURT THAT HELD THAT INDIVIDUALS ARE IMMUNE FROM LIABILITY UNDER 820.2. SO I BELIEVE YOUR TENTATIVE IS PERFECTLY CORRECT.

THE COURT: IT IS. DEMURRER SUSTAINED WITHOUT LEAVE TO AMEND AS TO HOKINSON AND HAHN AND WITHOUT LEAVE TO AMEND AS TO THE CITY WITH REGARD TO 10, 14 AND 15.

JUST A THOUGHT AS WE GO WENDING OUR WAY TOWARD THE TRIAL OF THIS CASE. I REALIZE THAT MATTERS MAY GET RESOLVED BY SUMMARY JUDGMENT OR MAY GET RESOLVED BY PLAINTIFF'S COUNSEL DECIDING WHAT THEORIES SHE WANTS TO PRESENT. BUT I AM LOOKING AT WHAT IS NOW,

* * *

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

OLGA H. GARAU, Plaintiff, v. JAMES K. HAHN, THOMAS C. HOKINSON, CITY OF LOS ANGELES, and DOES 1 to 20 Inclusive, Defendants.	CASE NO. BC 168531 [Honorable Richard P. Kalustian] **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION** Date: February 13, 1998 Time: 8:45 a.m. Dept: "17" Case Filed: 4/1/97 Motion Cut-Off: 2/28/98 Discovery Cut-Off: 2/28/98 Trial Date: 3/30/98

(Filed and Entered Feb. 24, 1998)

The Motion of Defendant CITY OF LOS ANGELES for summary adjudication as to Plaintiff's second, fourth, sixth and seventh causes of action to Plaintiff's verified First Amended Complaint came on regularly for hearing on February 3, 1998, at 8:45 a.m. in Department "17."

Prior to the hearing, Plaintiff dismissed the second, sixth and seventh causes of action.

On proof being made to the satisfaction of this Court that the motion should be granted and good cause appearing therefore,

IT IS ORDERED that Defendant's motion for summary adjudication as to the Fourth Cause of Action,

violation of the Ralph Civil Rights Act, Code of Civil Procedure section 51.7, is granted in Defendant's favor as there is no triable issue of material fact.

IT IS ALSO ORDERED that Plaintiff's request for a continuance of the hearing is denied in that Plaintiff has failed to satisfy the requirements set forth in Code of Civil Procedure section 437c(h).

DATED: FEB 24 1998, 1998 RICHARD KALUSTIAN
Richard P. Kalustian
Judge of the Superior Court

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**SUPERIOR COURT OF THE
STATE OF CALIFORNIA
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OLGA H. GARAU, Plaintiff, v. JAMES K. HAHN, THOMAS C. HOKINSON, CITY OF LOS ANGELES, and DOES 1 to 20 Inclusive, Defendants.	CASE NO. BC 168531 [Honorable Richard P. Kalustian] **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** Date: 2/26/98 Time: 8:45 a.m. Dept: "17" (Filed and Entered March 11, 1998)

The motion of defendant CITY OF LOS ANGELES for summary judgment, or alternatively, summary adjudication of the first, third, fifth, eighth, ninth, twelfth and sixteenth causes of action of plaintiff's verified first

amended complaint came on regularly for hearing on February 26, 1998 at 8:45 a.m. in Department 17.

On proof being made to the satisfaction of this Court that the motion should be granted and good cause appearing, therefore

IT IS HEREBY ORDERED that defendant's motion for summary judgment is granted as follows:

1. There are no material triable issues of fact as to plaintiff's first cause of action for violation of Government Code section 12940, et seq. Plaintiff has not established facts to show that she was subjected to any discrimination based on gender and/or national origin.

2. There are no material triable issues of fact as to plaintiff's third cause of action for violation of Code of Civil Procedure section 52.1. The Bane Act does not apply to employment discrimination actions.

3. There are no material triable issues of fact as to the fifth cause of action for violation of Labor Code section 1102.5. Plaintiff was not terminated for being a whistleblower or in retaliation for complaining of alleged discrimination.

4. There are no material triable issues of fact as to the eighth cause of action for violation of Article 1, section 2 of the California Constitution, or as to the ninth cause of action for the violation of Article 1, section 3 of the California Constitution. Plaintiff's speech was not protected as a matter of public concern.

5. There are no material triable issues of fact as to the twelfth cause of action for violation of Article 1,

section 8 of the California Constitution per the above and below ruling.

6. There are no material triable issues of fact as to the sixteenth cause of action for constructive discharge, as plaintiff's working conditions were not intolerable to a reasonable attorney.

The Court considered relevant, competent evidence and disregarded irrelevant, incompetent evidence.

IT IS ALSO ORDERED that plaintiff's request for a continuance of the hearing is denied in that plaintiff has failed to satisfy the requirements set forth in Code of Civil Procedure section 437c(h). DATED: 3/11, 1998

By /s/ Richard P. Kalustian
Honorable
Richard P. Kalustian
Judge of the Superior Court

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OLGA H. GARAU, Plaintiff, v. JAMES K. HAHN, THOMAS C. HOKINSON, CITY OF LOS ANGELES, and DOES 1 to 20 Inclusive, Defendants.	CASE NO. BC 168531 [Honorable Richard P. Kalustian] **JUDGMENT BY COURT ORDER UNDER C.C.P. SECTION 437c AGAINST PLAINTIFF AND IN FAVOR OF DEFENDANT CITY OF LOS ANGELES** (Filed and Entered March 11, 1998)

On February 26, 1998, the motion for summary judgment of defendant CITY OF LOS ANGELES came on regularly for hearing in Department "17" of the above-entitled Court, the Honorable Richard P. Kalustian presiding. Plaintiff appeared on behalf of herself. Linda C. Miller of Rushfeldt, Shelley & Drake LLP appeared on behalf of defendant CITY OF LOS ANGELES.

Based on the papers submitted by all parties, the Court granted the motion for summary judgment of defendant CITY OF LOS ANGELES. The motion was granted on the grounds that plaintiff failed to raise a triable issue of material fact as to her claims against defendant, as reflected in the oral record.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be entered against plaintiff OLGA GARAU and in favor of defendant CITY OF LOS ANGELES. Defendant shall recover said costs of suit from plaintiff in the amount of $_____.

DATED: 3/11, 1998

By /s/ Richard P. Kalustian
Honorable
Richard P. Kalustian
Judge of the Superior Court